

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

R & F Metals Company, Inc.  
9101 West Fort Street  
Detroit, Michigan 48209

Respondent

)  
) Docket No. MM-5- 2001-003  
) CAA-5- 2001-005  
) CWA-5- 2001-009  
) RCRA-5- 2001-005  
) Proceeding to Assess Administrative Penalties  
) under Section 113(d)  
) of the Clean Air Act  
) 42 U.S.C. § 7413, Section 3008(a)  
) of the Solid Waste Disposal Act  
) 42 U.S.C. § 6928(a) and Class II  
) Civil Penalty under Section 311  
) of the Clean Water Act,  
) 33 U.S.C. § 1321.  
)

ADMINISTRATIVE COMPLAINT AND NOTICE  
OF PROPOSED ORDER ASSESSING A PENALTY

This civil administrative action is instituted pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d), Section 311(b) (6) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b) (6), as amended by the Oil Pollution Act of 1990 ("OPA"), Section 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), 42 U.S.C. § 6928(a), and pursuant to the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22, ("Consolidated Rules") against Respondent, R & F Metals Company, Inc. ("R & F") for administrative penalties. The Complainants are, by lawful delegation, Directors of the Air and Radiation Division for the

violations of the CAA alleged in the Complaint, Superfund Division for the violations of the CWA alleged in the Complaint and the Chief of the Enforcement and Compliance Assurance Branch in the Waste, Pesticides and Toxics Division for the violations of RCRA alleged in the Complaint. They jointly issue this Complaint.

I. STATUTORY AND REGULATORY BACKGROUND

A. CLEAN AIR ACT

1. Section 608(a) of the CAA, 42 U.S.C. § 7671g(a), provides, in part, that the Administrator of the U.S. EPA shall promulgate regulations establishing standards and requirements regarding the use and disposal of class I and class II substances during service, repair, or disposal of appliances and industrial process refrigeration.

2. The term "class I substance" means each of the substances listed as provided in Section 602(a) of the CAA, 42 U.S.C. § 7671a(a), and Section 601(3) of the Act, 42 U.S.C. § 7671(3), and Appendix A to Subpart A of Part 82, 40 C.F.R. Part 82.

3. The term "class II substance" means each of the substances listed as provided in Section 602(b) of the CAA, 42 U.S.C. § 7671a(b), and Section 601(4) of the Act, and Section 601(4) of the CAA, 42 U.S.C. § 7671(4), and Appendix B to Subpart A of Part 82, 40 C.F.R. Part § 82.

4. The term "appliance" is defined in Section 601(1) of the Act, 42 U.S.C. § 7671(1), and 40 C.F.R. § 82.152(a), as any device which contains and uses a class I or class II substance as a refrigerant and which is used for

household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

5. The term "small appliance" is defined in 40 C.F.R. § 82.152 to include home refrigerators and freezers, room air conditioners, dehumidifiers and other devices manufactured, charged and hermetically sealed with five pounds or less of a refrigerant.

6. On May 14, 1993, pursuant to Section 608(a) of the Act, 42 U.S.C. § 7671g(a), U.S. EPA published regulations establishing standards and requirements regarding the use and disposal of class I and class II substances during service, repair, or disposal of appliances and industrial process refrigeration units. These regulations, which have been subsequently amended, are codified in Title 40 of the Code of Federal Regulations, Part 82, Subpart F.

7. 40 C.F.R. § 82.156(f) requires, in part, that, effective July 13, 1993, persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance, room air conditioning, motor vehicle air conditioners (MVAC), and MVAC-like appliances must either recover any remaining refrigerant from the appliance in accordance with specific procedures described in 40 CFR § 82.156(g) or (h), or verify that the refrigerant has been evacuated from the appliance or shipment of appliances previously. Such verification must include a signed statement from the person from whom the appliance or shipment of appliances is obtained that all refrigerant that had not leaked previously has been recovered from the appliances. This statement must include the name and address of the

person who recovered the refrigerant and the date the refrigerant was recovered or a contract that refrigerant will be removed prior to delivery.

8. 40 C.F.R. § 82.166(i) requires, in part, that, effective November 14, 1994, persons disposing of small appliances, MVACs, and MVAC-like appliances must maintain copies of signed statements obtained pursuant to 40 C.F.R. § 82.156.

#### B. CLEAN WATER ACT

9. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges".

10. The regulations at 40 C.F.R. Part 112 set forth procedures, methods and requirements to prevent the discharge of oil from non-transportation-related facilities into or upon the navigable waters of the United States and adjoining shorelines. The regulated facilities include those that drill for, produce, gather, store, process, refine, transfer, distribute or consume oil or oil products.

11. The effective date of the regulations at 40 C.F.R. Part 112 was January 10, 1974 ("effective date").

#### C. Resource Conservation and Recovery Act

12. Various sections of 3001 through 3038 of RCRA, 42 U.S.C. §§ 6901 through 6938, authorize the Administrator of U.S. EPA to promulgate

regulations covering the generation, transportation, treatment, storage or disposal of hazardous waste, including used oil.

13. On May 19, 1980 U.S. EPA promulgated regulations, codified at 40 C.F.R. Parts 260 through 265, governing generators and transporters of hazardous waste and facilities that treat, store and dispose of hazardous waste. These regulations have been amended from time to time, including, but not limited to, on September 10, 1992 when U.S. EPA promulgated regulations on the management of used oil and codified those rules at 40 C.F.R. Part 279.

14. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of U.S. EPA's regulations or of any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

15. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Michigan final authorization to administer its hazardous waste program in lieu of the federal government's base RCRA program effective October 30, 1986. 51 Fed. Reg. 36804 (October 16, 1986). The U.S. EPA granted Michigan final authorization to administer certain additional requirements effective January 23, 1990, 54 Fed. Reg. 48608 (November 24, 1989); June 24, 1991, 56 Fed. Reg. 18517 (April 23, 1991); November 30, 1993, 58 Fed. Reg. 51244 (October 1, 1993); April 8, 1996, 61 Fed. Reg. 4742 (February

8, 1996); and December 28, 1998, 63 FR 57912 (October 29, 1998) (stayed and corrected effective June 1, 1999, 64 Fed. Reg. 10111 (March 2, 1999)). The U.S. EPA-authorized Michigan regulations are codified at Michigan Administrative Code (MAC) Rules 299.9101 et seq. See also 40 CFR § 272.1151 et seq.

16. U.S. EPA has provided notice of commencement of this action to the State of Michigan pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

## II. FACTUAL ALLEGATIONS

### A. GENERAL

17. R & F is a Michigan corporation with its principal place of business in Detroit, Michigan.

18. R & F is the operator of a scrap processing facility, located at 9101 Fort Street, Detroit, Michigan ("the R & F facility").

19. Metro Robbins Land Company is the owner of the property on which the R & F facility operates.

20. Jerome Robbins is the president of R & F.

21. R & F is a scrap metal recycler. R & F has accepted metallic scrap, including, but not limited to, aluminum filter chip paper, small appliances, auto parts (engines, transmissions and gear boxes), electric motors and machine turnings.

22. R & F collected in piles at the R & F facility aluminum chip paper, machine turnings and transmission parts. On or about July 21, 1999 these items were segregated into three separate piles. There were two holes in the earth at

the R & F facility located near these piles ("hereinafter referred to as surface impoundments"). There was a metal drip pad on the ground above one of these surface impoundments. During the November 1, 1999 inspection, oil had drained into this pan with dimensions 8" x 15' x 2'. At that time R & F informed EPA that this oil was pumped into two 500 gallon above ground storage tanks.

23. R & F leased roll off boxes to some of its customers. The roll off boxes were used to collect scrap metal and other items which were then transported to the R & F facility. R & F placed the contents of the roll-off boxes on the ground at the R & F facility.

24. R & F received aluminum filter chip paper from automotive plants.

25. The aluminum filter chip paper, machine turnings and transmission parts contained oil on or within them.

26. The R & F facility had a metal drip pad on the ground above one of the surface impoundments located at the R & F facility. R & F collected oil from the piles into the surface impoundments and metal drip pad.

27. R & F pumped oil that collected in the metal drip pad and surface impoundment into 55 gallon drums and other containers. R & F collected approximately 1000 gallons of oil every 3 to 5 months from the metal drip pad.

28. R & F has owned or operated the R & F facility since 1976.

29. Baby Creek, the Detroit and Rouge Rivers are navigable waters located within 3/4 of a mile from R & F.

30. R & F is located within the water drainage district serviced by the City of Detroit combined sewer system.

31. R & F has a manhole located at its property that drains to Fort Street. There are also street drains located on Fort Street near the R & F facility main entrance and exit.

32. The manhole and street drains identified in paragraph 31 above connect to the City of Detroit combined sewer system.

33. Water discharged to the manhole and street drains identified in paragraph 31 above may be directed to either the Detroit River via the City of Detroit Waste Water Treatment Plant or, under certain storm events, directly to Baby Creek and then the Rouge River.

34. The City of Detroit Waste Water Treatment Plant discharges to the Detroit River.

35. On July 15, and 21, August 2 and November 1, 1999, U.S.EPA, Region 5, conducted inspections of the R & F facility.

36. During the July 21, 1999 inspection there were piles of scrap metal, drums, soil and oil coated metal parts located on top of earth.

#### B. CLEAN AIR ACT RELATED

37. R & F accepted small appliances at the R & F facility.

38. On July 15, 1999 there were large piles of scrap metal segregated by type at the R & F facility. Seven small appliance or parts thereof were present at the R & F facility on that date.

39. At the time of the July 15, 1999 inspection R & F did not have equipment for the evacuation or recovery of refrigerants.



40. At the time of the July 15, 1999 inspection R & F did not have any signed statements indicating that the refrigerants from the small appliances identified in paragraph 38 above were properly recovered from them prior to delivery to the R & F facility.

41. On January 12, 2000, Margaret M. Guerriero, Acting Director, Air and Radiation Division, Region 5, issued a Finding of Violation (FOV) to R & F, pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413. The FOV cited violations of Section 608(c) of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. §§ 82.166(i) and 82.156(f). On November 30, 2000 and December 12, 2000, pursuant to section 113(d) of the CAA, 42 U.S.C. §7413(d), the Attorney General and the Administrator approved Complainant, Director of the Air and Radiation Division, filing Counts I and II more than one year after the date of the incurrence of the violations.

C. CLEAN WATER ACT AND RCRA RELATED

42. From 1976 to July 29, 1998, R & F had a 10,000 gallon underground storage tank at the R&F facility used for storing diesel fuel. On or about July 21, 1999, R & F had six tanks above ground and over 100 drums at the R & F facility.

43. On or about July 21, 1999, the total storage capacity of the tanks and drums was 8,745 gallons at the R & F facility.

44. On or about July 21, 1999, the tanks and drums and their storage capacity at the R & F facility were as follows: